

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
CHING LUM,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Hawaii.

Filed

JUL 22 1918

H. D. Alderton,
Clerk.

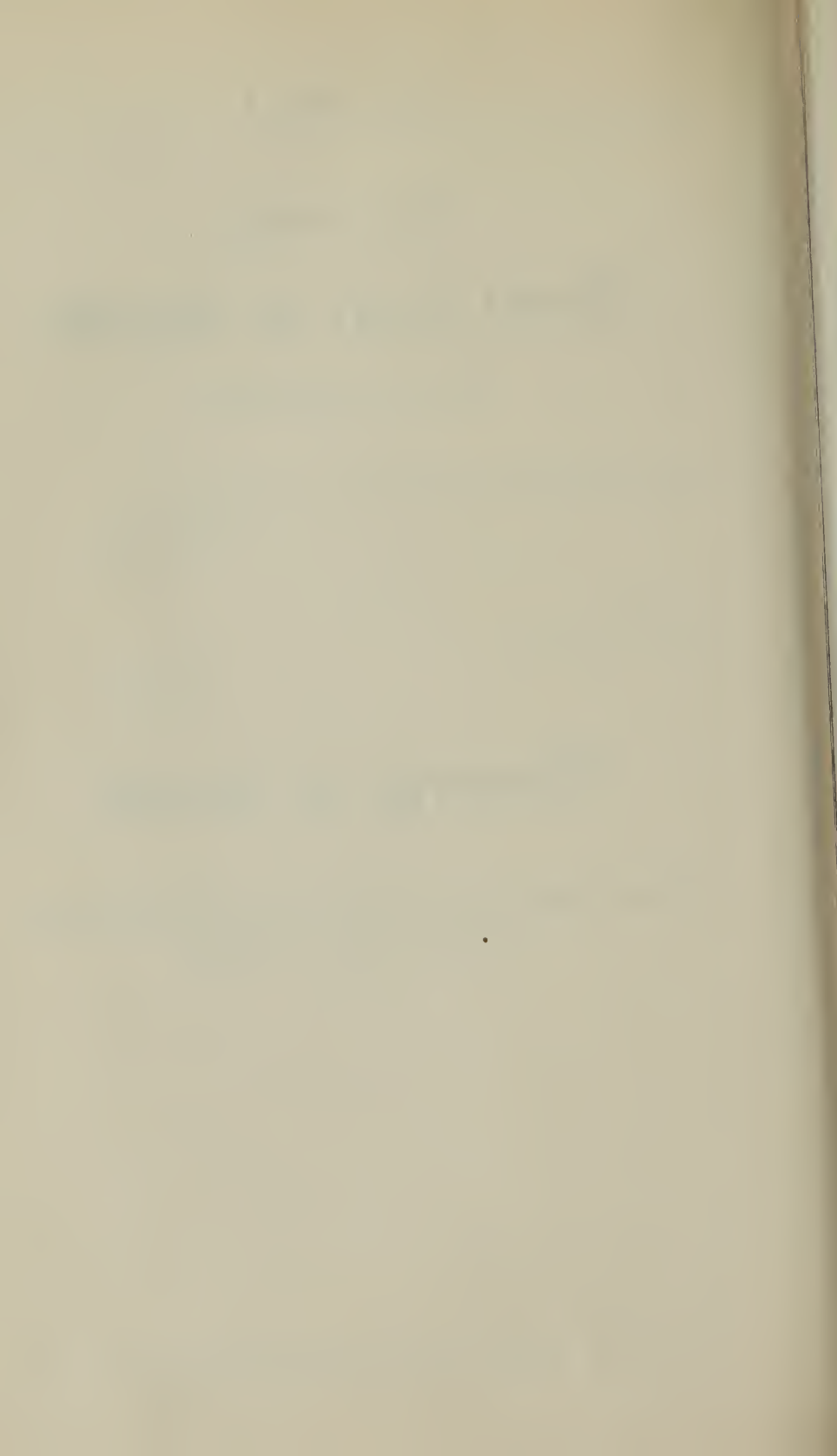
No. 2800

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
CHING LUM,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Hawaii.



INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Harry B. Brown.....	31
Affidavit of Richard L. Halsey.....	30
Affidavit of Moses Kauwe.....	36
Affidavit of Manuel Rawlins.....	34
Assignment of Errors.....	60
Attorneys, Names and Addresses of.....	1
Bond for Appearance.....	15
Cablegram, October 17, 1913, Acting Secretary to Immigration, Honolulu.....	29
Certificate of Clerk U. S. District Court to Tran- script of Record.....	66
Citation on Appeal.....	64
Demurrer to Petition for Writ of Habeas Cor- pus	17
Demurrer to Return to Writ of Habeas Corpus	39
Judgment	56
Names and Addresses of Attorneys.....	1
Opinion on Demurrer to Petition for Writ of Habeas Corpus..	20
Opinion, on Demurrer to Return to Writ of Habeas Corpus	47
Opinion, Supplementary, on Demurrer to Re- turn to Writ of Habeas Corpus.....	53

Index.	Page
Order Allowing Appeal	59
Order Continuing Argument to February 6, 1915	41
Order Continuing Argument to February 13, 1915	41
Order Continuing Argument to February 27, 1915	42
Order Continuing Argument to March 6, 1915.	42
Order Continuing Argument to March 13, 1915.	43
Order Continuing Argument to April 10, 1915..	43
Order Continuing Argument to April 24, 1915..	44
Order Continuing Argument to May 8, 1915...	44
Order Continuing Argument to May 22, 1915..	45
Order Continuing Argument to May 28, 1915..	45
Order Continuing Cause to August 4, 1915.....	55
Order Continuing Hearing on Demurrer to Peti- tion for Writ of Habeas Corpus to October 24, 1913	18
Order Continuing Hearing on Demurrer to Peti- tion for Writ of Habeas Corpus to October 25, 1913	19
Order Continuing Hearing on Return to Writ of Habeas Corpus	38
Order Continuing Hearing to October 22, 1913..	16
Order Continuing Hearing to October 23, 1913	16
Order Continuing Hearing to October 31, 1913..	37
Order Directing Issuance of Writ of Habeas Corpus, etc.	12
Order Discharging Petitioner	55
Order Extending Time to May 15, 1916, to Trans- mit Record on Appeal	3

Index.	Page
Order Extending Time to June 15, 1916, to Transmit Record on Appeal.....	4
Order Extending Time to August 15, 1916, to Transmit Record on Appeal.....	1
Order of Submission May 28, 1915.....	46
Order of Submission of March 16, 1914.....	40
Order of Submission of Return and Demurrer to Return to Writ of Habeas Corpus.....	38
Order Overruling Demurrer to Petition for Writ of Habeas Corpus, etc.	19
Order Sustaining Demurrer to Return to Writ of Habeas Corpus, etc.	46
Petition for Appeal.	58
Petition for Writ of Habeas Corpus.....	8
Praeceptum for Transcript.....	65
Return of Richard L. Halsey, Inspector-in- Charge of Immigration at the Port of Hono- lulu, to the Writ of Habeas Corpus, Hereto- fore in this Cause Issued	25
Return to Writ of Habeas Corpus	25
Statement of Clerk.....	5
Writ of Habeas Corpus	13

Names and Addresses of Attorneys.

For Petitioner, CHING LUM:

THOMPSON, MILVERTON & CATHCART,
Campbell Block, Merchant, Corner Fort
Streets, Honolulu, Hawaii.

E. A. MOTT-SMITH, Esq., Bank of Hawaii
Bldg., Honolulu, Hawaii.

W. L. STANLEY, Esq., #313 Kauikeolani
Bldg., Honolulu, Hawaii.

For Respondent, RICHARD L. HALSEY, Esq.,
United States Immigration Inspector in
Charge at the Port of Honolulu:

S. C. HUBER, Esq., United States District
Attorney, Honolulu, Hawaii. [1*]

*In the United States District Court, in and for the
District and Territory of Hawaii.*

No. 73.

In the Matter of the Application of CHUNG LUM
for a Writ of Habeas Corpus.

Order Extending Time to Aug. 15, 1916, to Transmit Record on Appeal.

Now, on this 16th day of March, A. D. 1916, it appearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited

*Page-number appearing at foot of page of original certified Record.

therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to April 15, 1916.

Dated, Honolulu, T. H., March 16th, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 16th day of March, A. D. 1916.

THOMPSON, MILVERTON & CATHCART.

C. S. F.

[Endorsed]: #73. In the U. S. District Court, Territory of Hawaii. In the Matter of the Application of Chung Lum for Writ of Habeas Corpus. Order Extending Time. Filed Mar. 16, 1916. Geo. R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk.
[2]

*In the United States District Court, in and for the
District and Territory of Hawaii.*

No. 73.

In the Matter of the Application of CHUNG LUM
for a Writ of Habeas Corpus.

**Order Extending Time to May 15, 1916, to Transmit
Record on Appeal.**

Now, on this 15th day of April, A. D. 1916, it appearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to May 15, 1916.

Dated, Honolulu, T. H., April 15, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 15th day of April, A. D. 1916.

THOMPSON, MILVERTON & CATHCART.

C. S. F.

[Endorsed]: #73. In the United States *District* for the Territory of Hawaii. In the Matter of the Application of Chung Lum for a Writ of Habeas Corpus. Order Extending Time to Transmit Record

on Appeal. Filed Apr. 15, 1916. George R. Clark,
Clerk. By Wm. L. Rosa, Deputy Clerk. [3]

*In the United States District Court, in and for the
District and Territory of Hawaii.*

No. 73.

In the Matter of the Application of CHUNG LUM
for a Writ of Habeas Corpus.

**Order Extending Time to June 15, 1916, to Transmit
Record on Appeal.**

Now, on this 15th day of May, A. D. 1916, it appearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to June 15, 1916.

Dated: Honolulu, T. H., May 15th, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 15th day of May, A. D. 1916.

S. C. HUBER,
U. S. Attorney.

THOMPSON, MILVERTON & CATHCART.
C. S. F.

[Endorsed]: #73. United States District Court, Territory of Hawaii. In the Matter of the Application of Chung Lum for a Writ of Habeas Corpus. Filed May 15, 1916. George R. Clark, Clerk. By Ray B. Rietow, Deputy Clerk. [4]

*In the United States District Court, in and for the
District and Territory of Hawaii.*

No. 73.

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

Statement of Clerk.

TIME OF COMMENCEMENT OF SUIT.

October 18, 1913: Verified petition for writ of habeas corpus, order for issuance of writ of habeas corpus and marshal's return thereon.

NAMES OF ORIGINAL PARTIES.

Petitioner: Ching Lum.

Respondent: Richard L. Halsey, Esq., United States Inspector of Immigration in Charge at the Port of Honolulu.

DATES OF FILING OF THE PLEADINGS.

October 18, 1913: Petition.

October 22, 1913: Demurrer to petition.

October 28, 1913: Return of Richard L. Halsey, Esq., to the writ of habeas corpus.

December 1, 1913: Demurrer to return.

SERVICE OF PROCESS.

October 18, 1913: Writ issued and delivered to the United States marshal with the following return by the said United States marshal: "The within petition, order and writ of habeas corpus were received by me on the 18th day of October, A. D. 1913, at 8:40 P. M., and in obedience thereto I have served the same upon Richard L. Halsey, United States Immigration Inspector-in-Charge at the Port of Honolulu, in Honolulu, on the 18th day of October, A. D. 1913, and upon C. C. Bitting, Assistant United States District Attorney, in Honolulu, on the 20th day of October, [5] A. D. 1913, by handing to and leaving with each of them a certified copy of the within petition, order and writ of habeas corpus, and in further obedience thereto I hereby produce the body of the within-named Ching Lum forthwith before this Court. The within writ returned this 20th day of October, A. D. 1913. (Sgd.) E. R. Hendry, United States Marshal. Dated, Honolulu, T. H., October 18, 1913."

HEARINGS.

October 23, 1913: Proceedings at hearing on demurrer to petition and continuance to October 24, 1913, for decision.

October 25, 1913: Proceedings at decision overruling demurrer to petition.

December 1, 1913: Proceedings at hearing on demurrer to return and order in re briefs.

March 16, 1914: Proceedings at hearing and order taking case under advisement.

May 28, 1915: Proceedings at argument and order in re briefs.

August 2, 1915: Proceedings at decision sustaining demurrer to respondent's return and order continuing case to August 3, 1915, for taking of testimony as to length of residence of applicant.

August 4, 1915: Proceedings at supplemental decision discharging applicant under writ.

Above hearings had before the Hon. Sanford B. Dole, District Judge.

DECISIONS.

October 25, 1913: Decision overruling demurrer to petition.

August 2, 1915: Decision sustaining demurrer to respondent's return.

August 4, 1915: Supplemental decision discharging applicant under writ.

December 16, 1915: Judgment filed and entered (Dole, J.). [6]

PETITION FOR APPEAL.

February 15, 1916: Petition for appeal and order allowing same filed.

United States of America,
Territory of Hawaii,—ss.

I, George R. Clark, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective plead-

ings were filed; and account of the proceedings showing the service of the petition and writ of habeas corpus and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the application of Ching Lum for a writ of habeas corpus, Number 73, in the United States District Court for the Territory of Hawaii.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 23d day of May, A. D. 1916.

[Seal] GEORGE R. CLARK,
Clerk, U. S. District Court, Territory of Hawaii.

[7]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

Petition for Writ of Habeas Corpus.

To the Honorable SANFORD B. DOLE, Judge of
the United States District Court, in and for the
District and Territory of Hawaii:

Comes now Ching Shai, as the next friend of
Ching Lum, and respectfully shows unto your Honor
and your Honorable Court as follows, to wit:

1st. That he makes this application for the said
Ching Lum, as his next friend, on his behalf and by
his authority, for the reason that he, the said Ching
Lum, is incarcerated and now is in the custody of
R. L. Halsey, Inspector-in-Charge of Immigration,
for the United States in and for the District and

Territory of Hawaii, and that he is unlawfully held by the said R. L. Halsey, and because he is so held by the said R. L. Halsey is unable to sign this petition in his own behalf.

2d. Your petitioner further says that the said Ching Lum is a citizen of the Empire of China; that for more than 30 years last past he has been a resident of the City and County of Honolulu, Territory of Hawaii; that he, said Ching Lum, is a resident property holder, holding property in said Territory of Hawaii in the sum of \$50,000 and over; that he is a merchant and is engaged in general merchandising business conducted by [8] Sing Chan Company, in the said City and County of Honolulu.

3d. That said Ching Lum has not absented himself from the said territory for a period of more than five years last past, and your petitioner further alleges that said Ching Lum is now confined in the United States Immigration Station in said City and County of Honolulu, Territory of Hawaii, and unlawfully restrained from his liberty and prevented from being enlarged by the said R. L. Halsey, Inspector-in-Charge of Immigration as aforesaid.

4th. That said Ching Lum is not an undesirable alien within the meaning of the laws of the Territory of Hawaii.

5th. That your petitioner, acting for and on behalf of said Ching Lum, and on his authority did, on the 18th day of October, A. D. 1913, make application to the said R. L. Halsey to have said Ching Lum enlarged on bail; and then and there tendered good and sufficient securities for a bond of such amount as

said R. L. Halsey might require. That said R. L. Halsey then and there declined to enlarge the said Ching Lum, upon any bond, and stated that he was being held for investigation by the immigration authorities of the United States in and for the Territory of Hawaii.

6th. That the said Ching Lum is not now and has not been charged with the commission of any crime or offense against the laws of the United States relating to immigration.

7th. Your petitioner further says that upon his application to have the said Ching Lum enlarged upon bond, said R. L. Halsey stated to him that said Ching Lum would at his, said Halsey's convenience, be permitted a hearing, but he declined to say at what time said hearing would be held.

8th. Your petitioner further says that thereafter application was made to said R. L. Halsey for permission to allow the said Ching Lum to be represented by counsel, but the said R. L. Halsey [9] declined to permit the said Ching Lum to see or talk with counsel, and declined to have counsel represent him.

9th. That all and singular the premises are true and within the jurisdiction of your Honor and this Honorable Court.

WHEREFORE, this petitioner prays that a writ of habeas corpus be issued out of this Honorable Court by your Honor commanding the said R. L. Halsey to have and produce the body of said Ching Lum before this Honorable Court at such time and place as the Court may direct, and pending the action

hereon, that said Ching Lum be enlarged upon by such bond as your Honor may require in the premises.

Dated, Honolulu, October 18, 1913.

(Sgd.) CHING SHAI,

Next Friend of Ching Lum, Petitioner.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Ching Shai, being first duly sworn, deposes and says, that he is the petitioner named in the foregoing petition; that he has been acquainted with the said Ching Lum, the person unlawfully detained, for a period of thirty years and over; that during all of said period they have been intimately associated in social matters and business transactions; that he knows of his own knowledge that the said Ching Lum is the identical person he represents himself to be and the person now unlawfully detained by the said R. L. Halsey; that he has read the foregoing petition and that the same is true to the best of his knowledge, information and belief; that he makes this application and this verification in good faith and not for the purpose of aiding in the evasion of any of the laws of the United States, and that the reason why this verification and petition are not made by the said Ching Lum [10] is for the reason that the said Ching Lum is unable to communicate with counsel, and because of his detention as aforesaid, is unable to sign and verify the same in person.

(Sgd.) CHING SHAI.

Subscribed and sworn to before me this 18th day of October, 1913.

[Notarial Seal]

(Sgd.) BERNICE K. DWIGHT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [11]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

**Order Directing Issuance of Writ of Habeas Corpus,
etc.**

Upon reading the foregoing petition, let a writ of habeas corpus issue as prayed for forthwith, and, upon the filing of a bond in the sum of \$1000, with good and sufficient sureties, let the said Ching Lum be released to appear before this Court on Monday, October 20th, 1913, at the hour of ten o'clock A. M., and let a copy of this petition, order and writ be served upon the Honorable R. W. Breckons, United States District Attorney, or his deputy.

Dated, Honolulu, this 18th day of October, A. D. 1913.

(Sgd.) S. B. DOLE,
United States District Judge of the District Court of
the United States in and for the District of
Hawaii. [12]

Writ of Habeas Corpus.

The President of the United States of America,
to R. L. Halsey, Inspector-in-Charge of Immigration in and for the District and Territory of Hawaii.

We strictly command and enjoin you that you have and produce before the United States District Court, in and for the District and Territory of Hawaii, forthwith, the body of Ching Lum, and that you do on the 20th day of October, A. D. 1913, at the hour of ten o'clock A. M., in the courtroom of said Court at Honolulu, disclose the cause of his imprisonment and detention, and then and there receive, undergo and have what the said United States District Court shall consider right, and in accordance with the law of the land, concerning him the said Ching Lum, and to abide the judgment of the Court in this behalf.

And we do hereby further command the United States Marshal in and for the District and Territory of Hawaii to serve this writ of habeas corpus upon the said R. L. Halsey, and make due return hereof, together with this writ.

Hereof fail not at your peril.

Witness the Honorable S. B. DOLE, Judge of the United States District Court, in and for the District and Territory of Hawaii, this 18th day of October, A. D. 1913.

By the UNITED STATES DISTRICT COURT.

[Seal]

A. E. MURPHY,

Clerk of the Above-entitled Court.

By (Sgd.) F. L. Davis,

Deputy Clerk. [13]

MARSHAL'S RETURN.

United States Marshal's Office.

The within petition, order and writ of habeas corpus were received by me on the 18th day of October, A. D. 1913, at 8:40 P. M., and in obedience thereto I have served the same upon Richard L. Halsey, United States Immigration Inspector-in-Charge at the Port of Honolulu, in Honolulu, on the 18th day of October, A. D. 1913, and upon C. C. Bitting, Assistant United States District Attorney, in Honolulu, on the 20th day of October, A. D. 1913, by handing to and leaving with each of them a certified copy of the within petition, order and writ of habeas corpus, and in further obedience thereto I hereby produce the body of the within-named Ching Lum forthwith before this Court. The within writ returned this 20th day of October, A. D. 1913.

E. R. HENDRY,

United States Marshal.

Dated, Honolulu, T. H., October 18, 1913.

[Endorsed]: No. 73. (Title of Court and Cause.)
Petition for Writ, Order and Writ. Filed Oct. 18,
1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis,
Deputy Clerk. [14]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

Bond for Appearance.

KNOW ALL MEN BY THESE PRESENTS:
That we, Hong Quon and Wong Chee, both residents
of the City and County of Honolulu, Territory of
Hawaii, are held and firmly bound unto E. R.
Hendry, United States Marshal in and for the Dis-
trict and Territory of Hawaii, in the penal sum of
\$1,000, for the payment of which well and truly to
be made, we bind ourselves, our heirs, executors and
administrators, firmly by these presents.

Sealed with our seals and dated the 18th day of
October, A. D. 1913.

The condition of this obligation is such that if
Ching Lum, now detained by R. L. Halsey, Inspector-
in-charge of Immigration, in and for the Territory
of Hawaii, and sought to be enlarged upon by a writ
of habeas corpus, shall appear before the United
States District Court, in and for the District and
Territory of Hawaii, on the 20th day of October, at
the hour of 10 o'clock A. M., as by order of Court filed
herewith, he is required to do, and shall thereafter
appear before said Court at such time as it may
direct, then this obligation to be void, otherwise to
remain in full force and effect.

(Sgd.) HONG QUON.

(Sgd.) WONG CHEE.

The foregoing bond is approved as to form, amount and sureties.

(Sgd.) S. B. DOLE. [15]

[Endorsed]: No. 73. (Title of Court and Cause.)
Bond. Filed Oct. 18, 1913. A. E. Murphy, Clerk.
By (Sgd.) F. L. Davis, Deputy Clerk. [16]

Order Continuing Hearing to October 22, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Vol. 8, page 654, Monday, October 20,
1913.

(Title of Court and Cause.)

On this day came Mr. E. M. Watson, of the firm of Thompson, Wilder, Watson & Lymer, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States Attorney, on behalf of the respondent herein, Richard L. Halsey, and this cause was called for hearing on return. Thereupon, on motion of Mr. Bitting and consent of Mr. Watson, it was by the Court ordered that this cause be continued to October 22, 1913, at 10 o'clock A. M., for hearing on said return. [17]

Order Continuing Hearing to October 23, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Vol. 8, page 658, Wednesday, October 22,
1913.

(Title of Court and Cause.)

The within cause having been called on this day for

hearing on return to the writ herein, and none of the counsel for the respective parties being present, it was by the Court ordered that this cause be continued to October 23, 1913, at 10 o'clock A. M., for hearing on said return. [18]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Comes now Richard L. Halsey, the respondent named in the petition herein, and demurs to the petition herein filed, and for grounds of his demurrer says:

First. That the said petition and application for the writ of habeas corpus does not set forth the facts concerning the detention of the party alleged to be restrained.

Second. That the said petition does not set forth by virtue of what claim or authority the petitioner is detained.

Third. That said petition does not state, nor in any manner show that the petitioner does not know by virtue of what claim or authority the said Ching Lum is detained.

WHEREFORE, your respondent prays that the said petition may be dismissed, and the writ and order thereupon issued may be discharged, and the

petitioner remanded to the custody whence he came.

RICHARD L. HALSEY,
Inspector-in-Charge.

By (Sgd.) C. C. BITTING,
Assistant U. S. Attorney.

Dated this 22d day of October, A. D. 1913. [19]

[Endorsed]: No. 73. (Title of Court and Cause.)
Demurrer to Petition. Filed Oct. 22, 1913. A. E.
Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy
Clerk. [20]

**Order Continuing Hearing on Demurrer to Petition
for Writ of Habeas Corpus to October 24, 1913.**

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Thursday, October 23, 1913, Vol. 8, Page
659.

(Title of Court and Cause.)

On this day came the above petitioner in person and with Messrs. F. E. Thompson, A. A. Wilder and B. S. Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, counsel for said petitioner, and also came Mr. Richard L. Halsey, the respondent herein, in person and with Mr. C. C. Bitting, Assistant United States Attorney, and this cause was called for hearing on the return of the respondent herein. Thereupon Mr. Bitting filed respondent's demurrer to the petition herein and due argument having been had thereon by respective counsel, it was by the Court ordered that this cause be continued to Oc-

tober 24, 1913, at 10 o'clock A. M., for decision on said demurrer. [21]

**Order Continuing Hearing on Demurrer to Petition
for Writ of Habeas Corpus to October 25, 1913.**

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Friday, October 24, 1913, Vol. 8, Page
661.

(Title of Court and Cause.)

On this day came the above petitioner in person and with his counsel, Messrs. A. A. Wilder and B. S. Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, and also came the respondent Richard L. Halsey, in person and with Mr. C. C. Bitting, Assistant District Attorney, and this cause was called for decision on demurrer to the petition herein. Thereupon it was by the Court ordered that this cause be continued to October 25, 1913, at 10 o'clock A. M., for decision on said demurrer. [22]

**Order Overruling Demurrer to Petition for Writ of
Habeas Corpus, etc.**

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Saturday, October 25, 1913. Vol. 8, Page
663.

(Title of Court and Cause.)

On this day came the above petitioner in person and with his counsel, Mr. A. A. Wilder and B. S.

Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, and also came Mr. Richard L. Halsey, the respondent herein in person and with Mr. C. C. Bitting, Assistant United States Attorney, and this cause was called upon for decision on demurrer to the petition herein. Thereupon the Court read its decision overruling the said demurrer and allowing the respondent until October 28, 1913, within which to file a return to the writ herein. [23]

In the United States District Court for the Territory of Hawaii.

October, A. D. 1913, Term.

No. 73.

In the Matter of the Application of CHUNG LUM
for a Writ of Habeas Corpus.

No. 74.

In the Matter of the Application of WONG YUEN
for a Writ of Habeas Corpus.

No. 75.

In the Matter of the Application of SUI JOY for a
Writ of Habeas Corpus.

October 25, 1913.

**Opinion on Demurrer to Petition for Writ of Habeas
Corpus.**

Habeas Corpus—Delay of Writ until remedies below exhausted: On a petition for habeas corpus the Court will not usually grant the writ, except under peculiar and urgent circumstances, until

the petitioner has exhausted his remedies before the authority detaining him and on appeal therefrom.

Immigration Acts—Detention of persons charged with violation thereof: Temporary detention of persons charged with offenses under the immigration acts, pending inquiry, is valid.

Arrest—Probable Cause: Arrest of persons without probable cause, unauthorized. [24]

Same—Grounds: Upon arrest of a person, he or his counsel should be informed of the grounds thereof.

Habeas Corpus: Demurrer to Petition.

THOMPSON, WILDER, WATSON & LYMER, for Petitioners.

C. C. BITTING, Assistant U. S. District Attorney, for Respondent.

The petitions in these cases claim that the persons in whose behalf the petitions are made are unlawfully restrained of their liberty and prevented from being at large by R. L. Halsey, Inspector-in-charge of Immigration; also that the said Halsey had stated that such persons were being held for investigation by the immigration authorities of the United States in and for the Territory of Hawaii, and further allege that such persons are not now and have “not been charged with the commission of any crime or offense against the laws of the United States relating to immigration.”

The precedents in habeas corpus cases in the United States courts, particularly in the Supreme

Court, emphasize and reiterate the practice that although a federal court with power to grant a writ of habeas corpus, may grant such writ and discharge the accused in advance of his trial under an indictment, it is not bound to exercise that power immediately upon the application being made for the writ, but may await the result of the trial, and in its discretion as the special [25] circumstances of the case may require, put the petitioner to his writ of error from the highest court of the State. *Ex parte Terry*, 128 U. S. 289, 302.

In the case of *Whitten vs. Tomlinson*, 160 U. S. 231, 242, and citing many cases in the Supreme Court, the Court says:

“But, except in such peculiar and urgent cases previously mentioned the courts of the United States will not discharge the prisoner by habeas corpus in advance of a final determination of his case in the courts of the State; and, even after such final determination in those courts, will generally leave the petitioner to the usual and orderly course of proceeding by writ of error from this court.”

The Court has followed this practice and in the recent case of *Ryonosuke Sakaba* dismissed the petition for a writ on the ground that the applicant had not exhausted the remedies before the immigration officers, and still more recently the court refused to make any order on the petition for the writ, because the usual proceedings before the immigration officers had not taken place. This practice is, I think, a rea-

sonable one both for clients and the court. It will tend to prevent cases from being brought which ought not to be brought, and to put the court in a position to try to hear petitions where the remedies below have been exhausted, on the basis of a clear understanding. [26]

It is "clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character and while arrangements were being made for their deportation."

Accused of what? This expression "those accused," in the citation from *Wong Wing vs. United States*, 163 U. S. 228, 235, implies that the person held in custody is accused of something. In other words, has been arrested, in the words of the Constitution, "upon probable cause."

For the purposes of this demurrer the allegations that the persons arrested are not now and have not been charged with the commission of any crime or offense against the United States relating to immigration, must be taken as true. It cannot be argued that they might have been arrested for some other offense not relating to immigration, inasmuch as a previous allegation which must also be admitted to be true, refers to the statement of the respondent that such persons were being held for "investigation by the immigration authorities of the United States in and for the Territory of Hawaii," thus limiting

the possible grounds of arrest to offenses under the immigration laws. [27]

I know of no provision in the federal laws authorizing the arrest of anyone without probable cause merely for purpose of investigation.

If the immigration officers had informed counsel for the prisoners upon what charge they were detained, in case a charge had been made against them, such facts would have been stated in the petitions for the writs and the court would then have ascertained that the prisoners were not unlawfully deprived of their liberty, and upon such information would have been in a position to have denied the writs, leaving the prisoners to the proceedings provided by law for an investigation and treatment of such offenses as were within the jurisdiction of the Secretary of Labor and his agents.

As the cases stand, however, on the petitions and the demurrers, the Court feels compelled to overrule the demurrers and leave the respondent to state his authority and the grounds of making the arrests complained of in his return.

(Sgd.) SANFORD B. DOLE,
Judge, United States District Court.

[Endorsed]: No. 73. (Title of Court and Cause.)
Filed Oct. 25, 1913. (Decision of Dole, J., Overruling Demurrer to Petition.) A. E. Murphy, Clerk.
By (Sgd.) Wm. L. Rosa, Deputy Clerk. [28]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

**Return of Richard L. Halsey, Inspector-in-Charge of
Immigration at the Port of Honolulu, to the
Writ of Habeas Corpus Heretofore in this Cause
Issued.**

Comes now Richard L. Halsey, respondent above named, and by way of return to the writ of habeas corpus herein issued, respectfully shows:

First. That he is unable at this time, and has been unable since the service of the writ of habeas corpus upon himself to produce the body of the said Ching Lum, as by said writ ordered, because that by the order of this Court, improvidently issued, as respondent says, the said Ching Lum had been, and has been removed from his custody.

Second. That the writ herein issued, and the order for enlargement upon bail, was ordered by the Court without previous notice, as required by rule, having been given to the United States Attorney, or to the Assistant United States Attorney; [29] and by reason thereof respondent had no opportunity to call the attention of the same to the said United States Attorney, or the said Assistant United States Attorney, nor was he apprised himself until said writ and order for enlargement upon bail had been served upon him.

Third. That upon the 18th day of October, A. D.

1913, the petitioner was arrested under and by virtue of a warrant from the Acting Secretary of Labor, directed to respondent, requiring him to arrest and bring before himself for hearing, the said petitioner, upon the charge of being found receiving, sharing in or deriving benefit from a part or the whole of the earning of a prostitute; a copy of which is hereto attached and made a part hereof; that about eleven o'clock A. M. of said 18th day of October, A. D. 1913, one Ching Shai, who verifies the petition for the writ of habeas corpus in this cause, and who signed the same as next friend for the petitioner, appeared at the office of the respondent, with other Chinese, and stated that he wished to give bond for Ching Lum, Siu Joy and Wong Yuen; that the said Ching Shai was then informed by the respondent that these men had been arrested because they had property rented to prostitutes, and that they received benefits therefrom; that they would be given a hearing on the Monday following, and then would be entitled to have counsel at further hearings, and would be released upon satisfactory bond, and that if possible the bond would be given on Monday afternoon or Tuesday. That later in the day of the 18th day of October, 1913, and during the noon hour of said day, a person whom respondent afterwards learned to be Mr. Ulrich, appeared at the office of respondent and stated that he was from the office of Thompson, [30] Wilder, Watson and Lymer, and asked to see the said Ching Lum, Siu Joy and Wong Yuen, and asked why they were held; and that he was informed that the said parties were taken into custody for the violation of

section 3 of the Immigration Act, and that they were not permitted to have counsel until after a hearing had been given.

Fourth. Respondent admits that the said Ching Lum is a citizen of the Republic of China, and that he has been for many years last past a resident of the Territory of Hawaii.

Fifth. Answering paragraph five of said petition, respondent says that he did decline to enlarge the said Ching Lum at the time upon any bond, stating as a reason for said declination, that the petitioner was held for a hearing upon the charge of violation of section 3 of the Immigration Act, and was not entitled to be enlarged upon bail until such further time as in his discretion a hearing could be had and bail be allowed.

Sixth. The respondent denies paragraphs four, five and six of said petition, and says in reply to paragraph eight of said petition, that he specifically informed both the petitioner and the said representative of the firm of Thompson, Wilder, Watson and Lyner, that at such stage of the hearing as the officer before whom the hearing should be held, should deem proper, the petitioner might, if he so desired, be represented by counsel.

Seventh. That the writ of habeas corpus based upon the petition herein, was issued before a reasonable time had elapsed, or could elapse, for a hearing, as provided by law, and that the [31] detention of the petitioner at said time was not unlawful, but on the contrary was lawful and within the rights and duties of the respondent, and was made pursuant

to a law of the Congress of the United States of America, and the rules of the Department of Labor based thereon, and the detention so provided for.

Eighth. That said petition does not in any way state the facts, or show whether or not petitioner was unlawfully held by the respondent, nor are any facts stated or pretended to be stated in said petition setting forth or showing that the petitioner was unlawfully restrained of his liberty.

Ninth. That this Court had no jurisdiction over said cause, because said matter, and the subject thereof, was and is left entirely in the hands of the Secretary of Labor by the Laws of the United States, in whom alone, at said time, was vested the authority to inquire into the fact as to whether said alien petitioner was subject to arrest and deportation, and because the determination of that fact was vested alone by law in the Secretary of Labor, and that until a hearing should be had, and the full record of such hearing forwarded to the Bureau of Labor, together with any written argument submitted by the counsel for the petitioner, as provided by law, and the rules of the Department, this Court had no jurisdiction.

Tenth. That the issuance of said writ, and order for enlargement upon bail, before said hearing as provided by law, was without the jurisdiction of this Court, and if a pretended hearing of the facts in said matter involved should be attempted to be had by this Court, it would be an exercise of functions [32] of both the executive and legislative branches of the government of the United States by the Judiciary department thereof, and in contravention of

the principles of the Constitution of the United States.

Eleventh. That the respondent denies all further allegations and averments of said petition necessary to be denied, and not herein specifically denied.

Twelfth. That attached to this return and made a part hereof are the affidavits of Richard L. Halsey, Harry B. Brown, Manuel Rawlins and Moses Kauwe.

WHEREFORE, Respondent prays that the writ may be discharged, the petition dismissed, and the petitioner remanded to the custody whence he came, and that such other and further relief may be had to which the respondent may be entitled in the premises; and that the petitioner be required to pay the costs herein.

(Sgd.) RICHARD L. HALSEY,

(Sgd.) C. C. BITTING,

Assistant U. S. Attorney. [33]

“Via Commercial Pacific”

2.5 PM BDN

Oct. 17 1913.

37 USG WASHINGTON DC 25

IMMIGRATION HONOLULU

ARROW CHING LUM SIU JOY CHUN PIN
WONG YUEN KWANJIRO HARUTA RE-
CEIPTOR HATSUME HARUTA AND TOKU
SAKAI PROGNOSIS

LOUIS Y. POST,
ACTING SECRETARY.

TRANSLATION: (ARROW) ARREST FOLLOWING NAMED ALIEN (S) AND BRING BEFORE YOURSELF FOR HEARING, FORWARDING RECORD OF PROCEEDINGS TO THE DEPARTMENT.

(RECEIPTOR) ALIEN FOUND RECEIVING, SHARING IN, OR DERIVING BENEFIT FROM A PART OR THE WHOLE OF THE EARNINGS OF A PROSTITUTE.

(PROGNOSIS) ALIEN FOUND PRACTICING PROSTITUTION AFTER ENTRY. [34]

Affidavit of Richard L. Halsey.

Territory of Hawaii,

City and County of Honolulu,—ss.

Richard L. Halsey, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a resident of Honolulu, Territory of Hawaii; that I have been a resident of Honolulu, Territory of Hawaii, since November 13, 1903; that I am inspector-in-charge of the United States Immigration Service, District of Hawaii, and have been for more than a year last past; that upon the 18th day of October, 1913, at about 11:00 A. M., Mr. Ching Shai appeared at my office, with other Chinese, and stated that he wished to give bond for Mr. Ching Lum, Siu Joy and Wong Yuen. I informed Mr. Ching Shai that these men had been arrested because they had property rented to prostitutes, and that they received benefits therefrom which was against the law; that they would be given a hearing on Monday fol-

lowing, and that they would be entitled to have counsel at further hearings, and would be released upon satisfactory bond. That, if possible, the bond would be given on Monday afternoon or Tuesday; that it would be necessary to specify in the bond the property or sureties, clearly designating the same, and as to value, and whether any incumbrances were on same. Later, during the noon hour, a man, who I have since learned was a Mr. Ulrich, appeared at my office and stated that he was from the office of Thompson, Wilder, Watson & Lymer, and asked to see Ching Lum, Siu Joy and Wong Yuen, and asked why they were held. I informed him that they were taken into custody for violation of Section 3 of the Immigration Act, that they were not permitted to have counsel until after a hearing had been given.

(Sgd.) RICHARD L. HALSEY.

Subscribed and sworn to before me this 25th day of October, A. D. 1913.

(Sgd.) CHAS. L. SEYBOLT. [Seal]
Notary Public, 1st Judicial Circuit, Territory of
Hawaii. [35]

Affidavit of Harry B. Brown.

Territory of Hawaii,
City and County of Honolulu,—ss.

Harry B. Brown, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a resident of Honolulu, Territory of Hawaii, and an immigrant and acting Chinese Inspector in the United States Immigration Service. That on October 18th,

1913, Richard L. Halsey, inspector-in-charge, United States Immigration Service for the District of Hawaii, gave me a telegraphic warrant to serve on four Chinese. This warrant charged them with receiving, sharing in, and deriving benefit from the earnings of a prostitute or prostitutes. The names of the Chinese were Ching Lum, Siu Joy, Wong Yuen and Chun Pin. About 10:30 A. M. Mr. Ching Lum was found in the club rooms at Palama Junction and the warrant was then and there served on him and he was told the charges against him. He said that he did not own the houses at the present but that he had turned them over to his son. I specifically told him that he was charged in the warrant with receiving, sharing in, or deriving benefit from the earning or earnings of a prostitute or prostitutes, as he was the owner of some houses in Iwilei which were used for the purposes of prostitution, and that his bail would be \$1000, and that it would be necessary for him to have two sureties, each qualifying double the amount of the bond, and that they must qualify upon real estate. He then asked permission to telephone a friend and, I believe, mentioned the name of Ching Shai. He then went to another room where I suppose he telephoned to this friend, for he was gone three or four minutes and when he returned I asked him if he had gotten his friend and he said that everything was all right. I then left Mr. Manuel Rawlins in charge of Mr. Ching Lum and went down stairs to the Yee Shum Kee Store where Mr. Wong Yuen was located and I there served the warrant on him, telling that he was arrested on the war-

rant which charged him with receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes. Mr. [36] Wong Yuen then got into a hack with Mr. Rawlins and Mr. Ching Lum, and I got into another hack and went to the Market Hardware store, which is near the fish market, where I found Mr. Siu Joy. I told Mr. Siu Joy that he was placed under arrest and charged with receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes. I then took Mr. Siu Joy in the hack with me, and in company with the other hack in which were Mr. Rawlins, Mr. Wong Yuen and Mr. Ching Lum, we proceeded to the U. S. Immigration Station. We arrived there at about 11:00 A. M., Oct. 18, 1913. Mr. Ching Shai was waiting in the Immigration Office when we arrived. After placing the men in detention Mr. Rawlins and myself went out to look for the other person named in the telegraphic warrant, Mr. Chun Pin, but he was not found at his residence. We then went to Iwilei in search for Mr. Chun Pin but we were unable to locate him. We then returned to the Immigration Station. On our return, just opposite the U. S. Naval Station, we met two hacks in which there were Chinese. This a few moments after twelve o'clock, noon. Mr. Ching Shai was in one of these hacks, stopped the hack, and spoke to me. Mr. Ching Shai asked about bonds and I told him that Mr. Halsey was in charge of that. Nothing was said to Mr. Ching Shai or any member of his party as to why these Chinese were arrested or why they were detained, nor did Mr. Ching Shai ask for such information. I told Mr.

Ching Shai that they would be given a hearing Monday morning, and that bonds would then be arranged. I remember of telling him that it would take some little time to get bonds approved as the inspector-in-charge had to examine into the solvency of the bonds and after that the bonds would have to be approved by the U. S. District Attorney or his assistant as to form and execution; that the bonds would then be returned to the Immigration Office and the people released.

(Sgd.) HARRY B. BROWN. [37]

Subscribed and sworn to before me this 27th day of October, 1913.

[Seal] (Sgd.) P. H. BURNETTE,
Notary Public in and for the First Judicial Circuit,
Territory of Hawaii. [38]

Affidavit of Manuel Rawlins.

Territory of Hawaii,

City and County of Honolulu,—ss.

Manuel Rawlins, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a resident of Honolulu, Territory of Hawaii, and an employee in the United States Immigration Service. That on October 18, 1913, I was detailed to accompany Inspector Harry B. Brown to make arrests of certain Chinese. First we went to the residence of Mr. Ching Lum, in a lane off Beretania Street, near Palama Junction. Mr. Ching Lum was not there, and we then went to the club room on the third floor of a building at Palama Junction, where we found

Mr. Ching Lum. Mr. Brown told him that he was arrested in accordance with a warrant from the Acting Secretary of the Department of Labor, and that he was charged with being the owner of some houses in Iwilei which were used for prostitution, and that he was deriving benefit from such prostitution. Mr. Ching Lum immediately said that he had turned those houses over to his son. Mr. Ching Lum then asked Mr. Brown for privilege of going to the telephone to see about bondsmen. Previously Mr. Brown had told Mr. Ching Lum that the bond in the case would be in the sum of \$1,000. Mr. Ching Lum went to the telephone alone and was gone some length of time, probably three or four minutes. When he returned he said he was ready. We then went to a store near to this building, where Mr. Wong Yuen was taken into custody. He came in the hack with Mr. Ching Lum and myself, while Mr. Brown went in another hack to the hardware store near the Fish Market, where another Chinese was taken into custody. The entire party then came to the Immigration Station. This was about 11 A. M. After putting the Chinese in detention, Mr. Brown and myself got into a hack and went to Palama, to the residence of Mr. Chun Pin. He was not to be found. We were then returning to the Immigration Station, and when about opposite the Naval Station, a few minutes after 12, noon, we met two hacks with Chinese in them, going toward town, they stopped and spoke to Mr. Brown about getting Ching Lum and the others out on bond. Mr. Brown told them they would have to see Mr. Halsey about getting bonds;

they said *that* had seen Mr. Halsey, and Mr. Brown told them that nothing could be done until Monday morning, when he would give them a hearing, and then bonds could be arranged for.

(Sgd.) MANUEL RAWLINS.

Subscribed and sworn to before me this 27th day of October, 1913.

[Seal] (Sgd.) P. H. BURNETTE,
Notary Public in and for the First Judicial Circuit,
Territory of Hawaii. [39]

Affidavit of Moses Kauwe.

Territory of Hawaii,
City and County of Honolulu,—ss.

Moses Kauwe, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a resident of Honolulu, Territory of Hawaii, and an employee in the United States Immigration Service. That I was at my desk on the 18th day of October, 1913, and at about eleven o'clock A. M., Mr. Ching Shai, and some other Chinese, came into the office and Mr. Ching Shai stated to Mr. Richard L. Halsey that he wished to give bond for Mr. Ching Lum, Siu Joy, and Wong Yuen, and Mr. Halsey told him that the men had been arrested because they rented houses in Iwilei in which there were prostitutes, and that they derived benefit from renting the houses, and that this was against the law. Mr. Halsey told Mr. Ching Shai that Ching Lum, Siu Joy and Wong Yuen, would be given a hearing the following Monday and explained to him how after that a bond

could be made out for their release.

(Sgd.) MOSES KAUWE.

Subscribed and sworn to before me this 25th day of October, 1913.

[Seal] (Sgd.) DAVID L. PETERSON,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: No. 73. (Title of Court and Cause.)
Return of Richard L. Halsey. Filed Oct. 28, 1913.
A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa,
Deputy. [40]

Order Continuing Hearing to October 31, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Thursday, October 30th, 1913. Vol. 8,
Page 674.

(Title of Court and Cause.)

On this day came Mr. A. A. Wilder of the firm of
Thompson, Wilder, Watson & Lymer, counsel for
the above petitioner, and also came Mr. R. L. Halsey,
the respondent herein in person and with Mr. C. C.
Bitting, Assistant United States Attorney, and this
cause was called for hearing on respondent's re-
turn. Thereupon on motion of Mr. Wilder and con-
sent of Mr. Bitting, it was by the Court ordered that
this cause be continued to October 31, 1913, at 2
o'clock P. M. for hearing on said return. [41]

Order Continuing Hearing on Return to Writ of Habeas Corpus.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Friday, October 31st, 1913. Vol. 8, Page 675.

(Title of Court and Cause.)

On this day came Mr. C. C. Bitting, Assistant United States Attorney, on behalf of the respondent herein, neither the above petitioner or his counsel being present, and this cause was called for hearing on respondent's return. Thereupon it was by the Court ordered that this cause be continued until called up for hearing on said return. [42]

Order of Submission of Return and Demurrer to Return to Writ of Habeas Corpus.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 8, Page 708, Monday, December 1, 1913.

(Title of Court and Cause.)

On this day came Messrs. A. A. Wilder and B. S. Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for hearing on respondent's return. Thereupon a demurrer was filed to the return of respondent herein and due argument having been had

thereon by respective counsel, the said matter was by the Court taken under advisement and counsel ordered to file their briefs thereon. [43]

In the District Court of the United States, in and for the District and Territory of Hawaii.

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

Demurrer to Return to Writ of Habeas Corpus.

Comes now Ching Shai as the next friend of Ching Lum, petitioner herein, by his attorneys, Thompson, Wilder, Watson & Lymer, and demurs to the return filed herein and for grounds of demurrer alleges as follows:

First: That the said return does not set forth facts which would justify the holding of the said Ching Lum.

Second: That the said return does not show that any application setting forth the facts was made by the proper Immigration authorities for a warrant of arrest as is required by law, nor indeed, that any application at all was made for a warrant for the arrest of the said Ching Lum.

Third: That the alleged warrant of arrest does not make sufficiently definite and certain the nature of the charge against the said Ching Lum.

Fourth: That it does not appear in the said return that the said Ching Lum was permitted to be released from custody upon the furnishing of satisfactory bond as is expressly required in the said warrant of arrest and as is provided for by law.

Fifth: That it does not appear in the said return that the said Ching Lum is an alien who has ever "entered the United States" within the meaning of the law herein provided.

Sixth: That it appears in the said return that the said Ching Lum was deprived of his liberty without due process of law contrary to Article 5 of the amendments of the Constitution of the United States. [44]

THOMPSON, WILDER, WATSON & LYMER,
(By (Sgd.) B. S. U.)
Attorneys for Petitioner.

Dated, Honolulu, Dec. 1st, A. D. 1913.

[Endorsed]: No. 73. (Title of Court and Cause.)
Demurrer to the Return. Filed Dec. 1, 1913. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [45]

Order of Submission of March 16, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Monday, March 16, 1914. Vol. 9, Page
74.

(Title of Court and Cause.)

On this day came Mr. A. A. Wilder, of the firm of Thompson, Wilder, Watson & Lymer, counsel for the above applicant, and also came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, and this cause was called for hearing. Thereupon and after due argument the said cause was by the Court taken under advisement and counsel therein ordered to file briefs. [46]

Order Continuing Argument to February 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, January 30, 1915. Vol. 9, Page 482.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 6, 1915, at 10 o'clock A. M., for said argument. [47]

Order Continuing Argument to February 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, February 6, 1915. Vol. 9, Page 495.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States District Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to February 13, 1915, at 10 o'clock A. M., for argument. [48]

Order Continuing Argument to February 27, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, February 13, 1915. Vol. 9, Page 509.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 27, 1915, at 10 o'clock A. M., for argument. [49]

Order Continuing Argument to March 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Friday, February 26, 1915. Vol. 9, Page 525.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, whereupon it appearing to the Court that the above cause had been heretofore continued to February 27, 1915, at 10 o'clock A. M., for argument, it was by the Court ordered that the said cause be at this time continued to March 6, 1915, at 10 o'clock A. M., for such argument. [50]

Order Continuing Argument to March 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Saturday, March 6, 1915. Vol. 9, Page
535.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to March 13, 1915, at 10 A. M., for argument. [51]

Order Continuing Argument to April 10, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Saturday, March 13, 1915. Vol. 9,
Page 544.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to April 10, 1915, at 10 o'clock A. M., for argument. [52]

Order Continuing Argument to April 24, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, April 10, 1915. Vol. 9, Page 568.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to April 24, 1915, at 10 o'clock A. M., for argument. [53]

Order Continuing Argument to May 8, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, April 24, 1915. Vol. 9, Page 606.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 8, 1915, at 10 o'clock A. M., for argument. [54]

Order Continuing Argument to May 22, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, May 8, 1915. Vol. 9, Page 646.

(Title of Court and Cause.)

On this day came Mr. W. T. Carden, of the firm of Thompson and Milverton, counsel for the above applicant, and also came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 22, 1915, at 10 o'clock A. M., for argument. [55]

Order Continuing Argument to May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, May 22, 1915. Vol. 9, Page 669.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States District Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 28, 1915, at 2 o'clock P. M., for argument. [56]

Order of Submission of May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Friday, May 28, 1915. Vol. 9, Page 677.

(Title of Court and Cause.)

On this day came Mr. A. A. Wilder, on behalf of the above applicant, and also came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, and this cause was called for argument. Thereupon and after due argument by respective counsel, the Court ordered that the matters herein be submitted on briefs. [57]

Order Sustaining Demurrer to Return to Writ of Habeas Corpus, etc.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Monday, August 2, 1915. Vol. 9, Page 739.

(Title of Court and Cause.)

On this day came Mr. F. E. Thompson and A. A. Wilder, counsel for the above applicant, and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for decision. Thereupon the Court read and filed its decision herein sustaining the demurrer of said applicant to Respondent's Return and allowing respondent until August 3, 1915, at 10 o'clock A. M., to contest petitioner's allegations of residence in Hawaii. [58]

**Opinion on Demurrer to Return to Writ of Habeas
Corpus.**

*In the United States District Court for the Territory
of Hawaii.*

April, A. D. 1915, Term.

No. 75.

In the Matter of the Application of SUI JOY for a
Writ of Habeas Corpus.

(Also WONG YUEN, No. 74.)

(Also CHING LUM, No. 73.)

(Also KIMI YAMAMOTO, No. 91.)

August 2, 1915.

*Immigration—Deportation—Entering the United
States:* An alien who came to the Hawaiian Is-
lands previous to their annexation to the United
States, and was living there at the time of such
annexation, cannot be said to “have entered the
United States” within the meaning of section
3 of the act of February 20, 1907, as amended by
the act of March 26, 1910, 36 Stat. 263.

*Same — Same—Same—Actual landing subject to
statutory conditions:* The provisions of the said
statute for the deportation of aliens found “to
be unlawfully within the United States,” pre-
sume an actual landing of such aliens, subject to
the conditions as to conduct set forth in the stat-
ute.

Habeas Corpus: On demurrer to return.

THOMPSON, WILDER, WATSON & LYMER,
for Petitioners Sui Joy, Wong Yuen, and
Ching Lum.

J. W. CATHCART, for Petitioner, Kimi Yamamoto.

JEFF McCARN, United States District Attorney, for Respondent. [59]

In the first three of the above cases demurrers to the petitions were overruled, whereupon the respondent filed his returns which were demurred to by the petitioners, the fifth ground of demurrer being as follows:

“That it does not appear in the said return that the said Sui Joy is an alien who has ever entered the United States within the meaning of the law herein provided.” In the fourth case, the petitioner filed a traverse to the return of the respondent, in which, among other things, she raised the same point as raised on the fifth ground of the said demurrers, to wit, that she was not subject to the immigration laws of the United States, having come to the Hawaiian Islands while they were under the jurisdiction of the Republic of Hawaii.

The argument on this point is, briefly, that the petitioners, having come to the Hawaiian Islands previous to annexation, as alleged, and being domiciled residents here at the time of annexation, the statute does not apply to them, such persons, although aliens, not having “entered” the United States.

The following is the immigration rule applying to these cases:

“The application must state facts bringing the alien within one or more of the classes subject to deportation after entry. The proof of these facts should be the best that can be obtained. The application must be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where landing occurred), or a reason given for its absence, in which case effort should be made to supply the principal items of information mentioned in the blank form provided for such certificates. Telegraphic application may be resorted to only in case of necessity and must state (1) that the usual written application has been made and forwarded by mail, and (2) the substance of the facts and proof therein contained.” Immigration Rule 22, subdivision 2. [60]

The statute under which the petitioners are held is a part of section 3 of the act of February 20, 1907, as amended by the act of March 26, 1910, 36 Stat. 263. It is as follows:

“Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution *after such alien shall have entered the United States*, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute, or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prosti-

tutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States, and shall be deported in the manner provided by sections 20 and 21 of this act."

The demurrers are allowed on the fifth ground. It is obvious from a reading of division 2 of Immigration Rule 22, above quoted, that the Commissioner General of Immigration and the Secretary of Labor, who are authorized by the Immigration Act of February 20, 1907, 34 Stat. 898, sec. 22, to establish rules for carrying out the provisions of the act, have construed the act on the point referred to, as meaning an actual entry or landing in the United States. The said division 2 of the 22d rule, in providing for an application by the immigration officers to the Secretary of Labor for authority to arrest an alien suspected of being unlawfully in the United States, requires, among other things, that the application "shall be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where the landing occurred), or a reason given for its absence." Of course this can refer to nothing else than an actual landing in the United States. This construction is rendered still more positive by the "certificate of landing" required by the rule to accompany the application. The blank form provided by the Secretary of Labor and the Commissioner [61] General of Immigration under the authority of the statute, is as follows: "Form 564.

Certificate as to Landing of Alien (To accompany application for warrant of arrest).

DEPARTMENT OF COMMERCE AND LABOR.
Immigration Service.

_____, 190 —

I hereby certify that I have examined the records of the immigrant station at — with reference to the record of the landing or entry of —, an alien, and that the following facts relative to such landing or entry are disclosed by said records.

- (1) Name of alien, —; age, —; sex, —;
- (2) Race, —; country whence alien came, —;
- (3) Exact date and port of arrival in the United States, —.
- (4) Name of vessel and line, — (If alien arrived via Canada or Mexico, so state.)
- (5) Destination, —.
- (6) Occupation, —; money brought, \$—.
- (7) By whom passage paid, —.
- (8) Whether ever in United States before, —.
- (9) Whether inspected at time of arrival, —

(If held for special inquiry, so state.)

Remarks: _____

(Signature _____.

Official title), _____.”

Such construction, being authoritative and official, is entitled to great weight. Endlich's Interpretation of Statutes, s. 357.

Counsel in the Sui Joy, Ching Lum and Wong Yuen cases, set forth somewhat exhaustively the constitutional argument that Congress derived its

power to legislate as to immigrant aliens after being admitted, solely from section 8 of the first article of the Constitution of the United States, which gives it the power "to regulate commerce with foreign nations." Quoting from the brief, "the [62] theory is that commerce with foreign nations includes not only an exchange of commodities, but also the importation or incoming of passengers. The proposition that Congress has no power to regulate the affairs of individual persons in the United States except as incidental to some one of the powers expressly given to it by the Constitution, is fundamental." It follows therefore that whereas Congress may permit an alien immigrant to land under certain conditions as to conduct thereafter while in the country, involving forcible deportation upon his failure to conform to such conditions, it may not deport alien residents for similar conduct, with whom there has been no such conditional entry into the United States. In other words, an alien resident of the United States in regard to whom there was no condition as to his conduct during his residence, that was made the basis of his landing or entry into the country by a then existing statute, is not within the scope of section 3 of the Immigration Act of February 20, 1907, as amended by the act of March 26, 1910. Plainly the law does not affect persons who have not *entered* the United States previous to doing the acts charged. These petitioners all claim to have been living in Hawaii before and at the time of annexation. In matters of immigration the word *enter* has not acquired a technical meaning. It

would appear that these cases might well have been disposed of on their inception, on the ground that the statute is too clear to require interpretation. "*Absoluta sententia expositore indiget*" Potter's Dwaris, 128; Vattel's first rule, id. 126.

As the ruling on this ground of the demurrer disposes of the cases, the Court need not consider the [63] other grounds.

It is not clear whether there remains a question of fact to be decided. The returns in the first three cases do not specifically deny the allegations of residence in Hawaii before annexation, but make a general denial of all further allegations and averments of said petitions necessary to be denied. The return in the fourth case accepts the allegation of the petition in that case that the petitioner arrived in Hawaii in the year 1897, as correct. She (Kimi Yamamoto) is, therefore, under the foregoing conclusions, entitled to her discharge under the writ, which is hereby ordered.

If the respondent desires to contest the allegations of residence in Hawaii, in the three first cases, an opportunity will be given, otherwise such petitioners will be discharged.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the
Territory of Hawaii. [64]

Supplementary Decision.

On the afternoon of the day the foregoing decision was given in open court, counsel on both sides filed the following stipulation:

"It is hereby stipulated and agreed by and between the United States of America through

J. W. Thompson, its assistant District Attorney of the District and Territory of Hawaii, and Sui Joy, Ching Lum and Wong Yuen, by their attorneys, Thompson & Milverton, that each of said petitioners were residents of the Hawaiian Islands for a period of more than five (5) years prior to the 15th day of June, A. D. 1900."

By which stipulation it would appear that the said petitioners were residents here for over three years before the annexation of Hawaii to the United States, which took place August 12, 1898. The Court was thereupon prepared to order the discharge of the petitioners according to the conclusions of the foregoing decision, but before such order was effectuated the assistant district attorney, acting for the respondent, moved the Court for an opportunity of showing that the petitioners severally visited China after annexation and returned again to Hawaii.

Such motion must be denied, inasmuch as the cases contain no pleadings which would form a basis for such testimony—as there is no showing that such information is newly discovered and as such information, if it exists, obviously has been, during the pendency of these proceedings, within the reach of the respondent.

The writs are made absolute and the petitioners discharged.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the
Territory of Hawaii.

Honolulu, T. H., August 4, 1915. [65]

[Endorsed]: No. 73. (Title of Court and Cause.)
Decision of Dole, J., on Demurrer to Return. Filed
August 2, 1915. A. E. Murphy, Clerk. By (Sgd.)
F. L. Davis, Deputy Clerk. Supplementary Deci-
sion. Filed Aug. 9, 1915. A. E. Murphy, Clerk.
By (Sgd.) Wm. L. Rosa, Deputy Clerk. [66]

Order Continuing Cause to August 4, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Tuesday, August 3, 1915. Vol. 9, Page
741.

(Title of Court and Cause.)

On this day came Mr. F. E. Thompson, of the firm
of Thompson and Milverton, counsel for the above
applicant and also came Mr. J. W. Thompson, Assist-
ant United States Attorney, on behalf of the re-
spondent herein, and this cause was called for fur-
ther disposition. Thereupon it was by the Court
ordered that this cause be continued to August 4,
1915, at 10 o'clock A. M., for further disposition.
[67]

Order Discharging Petitioner.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Wednesday, August 4, 1915. Vol. 9,
Page 743.

(Title of Court and Cause.)

On this day came Mr. F. E. Thompson of the firm
of Thompson and Milverton, counsel for the above

applicant and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for further disposition. Thereupon it appearing from the stipulation of counsel that the within applicant was a resident of the Hawaiian Islands for the period of more than five years prior to the 15th day of June, 1900, it was by the Court ordered that said applicant be discharged under the writ herein. [68]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

October, A. D. 1915 Term.

No. 73.

In the Matter of the Application of CHING LUM
for a Writ of Habeas Corpus.

Judgment.

At the regular April, A. D. 1915 term of the District Court of the United States in and for the District and Territory of Hawaii, held in the courtroom of said court, City and County of Honolulu, in the Territory of Hawaii and the district aforesaid, on the 2d day of August, 1915, the above-entitled matter having heretofore been heard on the pleadings, evidence adduced before the Court, and argument of counsel for the respective parties, and due deliberation thereon, the Court finds that the above-named petitioner Ching Lum is entitled to be discharged, subject to the taking of an appeal by the respondent herein, Richard L. Halsey, in which case the said

applicant Ching Lum will be required to give a recognizance with surety in the sum of \$500 to answer the judgment of the appellate court.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the above-named petitioner Ching Lum, be, and he is hereby discharged from custody herein, subject to the taking of an appeal, and subject to exception by the United States of America. [69]

And the Court being advised that the above-entitled cause will be removed to the Appellate Court by proper proceedings to be had in that behalf, does hereby further order, adjudge and decree that the above-named Ching Lum give his recognizance with surety in the sum and amount of \$500, to answer the Judgment of the Appellate Court.

Given, made and dated at Hononolulu, Territory and District aforesaid, this 16 day of December, A. D. 1915.

(Sgd.) SANFORD B. DOLE,
Judge, U. S. District Court.

[Endorsed]: No. 73. (Title of Court and Cause.) Judgment, Entered in J. D. Book 2, at folio #654. Filed Dec. 16, 1915. F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow, Deputy Clerk. [70]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of CHING LUM for a
Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable CHARLES F. CLEMONS, Judge
of the Above-entitled Court:

The United States of America, by its attorney,
Horace W. Vaughan, conceiving itself aggrieved by
the order and judgment entered on the 16th day of
December, A. D. 1915, in the above-entitled proceed-
ing, does hereby appeal from the said order and
judgment to the Circuit Court of Appeals for the
Ninth Circuit, and files herewith its assignment of
errors intended to be urged upon appeal, and it prays
that its appeal may be allowed, and that a transcript
of the record of all proceedings and papers upon
which said order and judgment was made, duly au-
thenticated, may be sent to the Circuit Court of Ap-
peals for the Ninth Circuit of the United States.

Dated this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,

United States Attorney.

Received a copy of the above petition:

By His Attorneys,

[71]

[Endorsed]: No. 73. (Title of Court and Cause.)
Petition for Appeal. Filed February 15th, 1916.
(Sgd.) F. L. Davis, Clerk. [72]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of CHING LUM for a
Writ of Habeas Corpus.

Order Allowing Appeal.

Upon application and motion of Horace W. Vaughan, United States Attorney for the District and Territory of Hawaii:

IT IS HEREBY ORDERED, that the petition for appeal, heretofore filed herein by the United States of America, be, and the same is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment heretofore, on December 16th, 1915, filed and entered herein, be, and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which said final order and judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the clerk of this court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California.

Dated, this 31st day of January, A. D. 1916.

(Sgd.) CHAS. F. CLEMONS,

Judge U. S. District Court.

Received a copy of the above order:

By His Attorneys,

[Endorsed]: No. 73. (Title of Court and Cause.)
Order Allowing Appeal. Filed Feb. 15th, 1916.
(Sgd.) F. L. Davis, Clerk. [74]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of CHING LUM for a
Writ of Habeas Corpus.

Assignment of Errors.

And now comes the United States of America, by Horace W. Vaughan, its attorney, and says that in the record and proceedings in the above-entitled matter there is a manifest error and that the final record and judgment, made and entered in said matter on the 16th day of December, A. D. 1915, is erroneous and against the just rights of the said United States, in this, to wit:

I.

That the Court erred in assuming jurisdiction in this matter because it appears by the petition and record presented, that the writ was improperly issued.

II.

That because the rule of this court and the practice and rules of the Supreme Court of the United States and of the Circuit Court of Appeals for the Ninth Circuit require that in matters of this kind a copy of the record upon which the warrants for deportation were issued, should accompany the petition, and that no such record was attached to the petition for the writ of habeas corpus, and by reason thereof,

the said writ was improvidently and improperly issued. [75]

III.

That because the rule of court in this jurisdiction requires that the office of United States Attorney shall have notice of the application for a writ of habeas corpus one hour preceding the application therefor, and no such notice was served upon the United States Attorney or his assistant, or in said office; that therefore the writ was issued in violation of the rule of this court.

IV.

That the record as presented shows, from all the testimony adduced, that the petitioner was deriving benefit from the earnings of a prostitute, and that the finding thereon was conclusive upon this court and the court had no jurisdiction to inquire further into the facts of the case.

V.

That the Court erred in holding that because the petitioner, who was admitted to be an alien, and a citizen of the Republic of China, was without the Immigration Laws of the United States prohibiting the entrance of aliens, by reason of the fact that the petitioner had previously been a resident of the Kingdom or Republic of Hawaii, and before the annexation of Hawaii to the United States or the taking effect of the Organic Act providing for the Territory of Hawaii.

VI.

That the Court erred in holding that because the petitioner had become a resident of Hawaii before

the annexation of Hawaii to the United States, therefore petitioner did not come within the rules as prescribed by the statute, against the entry of an alien found to be deriving benefit from the earnings of a prostitute. [76]

VII.

That the Court erred in refusing to hold that although the petitioner was admittedly an alien and a citizen of the Republic of China, the petitioner was not amenable to the prohibitive laws of entrance, nor to the deportation laws of the United States.

VIII.

That the Court erred in holding that a Chinese citizen of the Republic of China, although domiciled in the Territory of Hawaii before the annexation thereof to the United States of America, was not amenable to deportation, although proven to be receiving the proceeds of earnings by a prostitute, and that because the petitioner had been in the Territory of Hawaii before annexation, he was privileged, although an alien and a citizen of the Republic of China, to receive the earnings of a prostitute and not be amenable to the laws of the United States providing for the deportation of an alien so receiving such earnings.

IX.

That in any proceedings upon the hearing, such as was had, the Court was without authority of law and a hearing under said petition and a ruling of the court made upon such hearing was trenching upon the duties of the executive branch of the Government.

WHEREAS, by the law of the land, the said application for a writ of habeas corpus should have been denied, and the said writ of habeas corpus should have been discharged, and the said applicant and petitioner should have been remanded to be dealt with according to law. [77]

And the aforesaid United States of America now prays that the order and judgment of December 16th, 1915, hereinabove mentioned, may be reversed, annulled, and held for naught, and that it, said United States, may have such other and further relief as may be proper in the premises.

Dated, this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,

United States Attorney.

Received a copy of the above Assignment of Errors:

_____,
By _____,
His Attorneys.

[Endorsed]: No. 73. (Title of Court and Cause.)
Assignment of Errors. Filed Feb. 15, 1916. (Sgd.)
F. L. Davis, Clerk. [78]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of CHING LUM for a
Writ of Habeas Corpus.

Citation on Appeal.

United States of America,—ss.

The President of the United States, to Ching Lum,
Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, filed in the clerk's office of the United States District Court for the Territory of Hawaii, wherein the United States of America is appellant, and you, Ching Lum, are appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 15 day of February, A. D. 1916, and of the Independence of the United States the one hundred and fortieth.

CHAS. F. CLEMONS,

Judge, U. S. District Court.

Attest: F. L. DAVIS,

Clerk U. S. District Court.

Received a copy of the within citation:

By His Attorneys,

_____.
_____. [79]

[Entered]: No. 73. In the District Court of the United States for the Territory of Hawaii. In the Matter of the Petition of Ching Lum for a Writ of Habeas Corpus. Citation on Appeal. Filed Feb. 15th, 1916. F. L. Davis, Clerk. By ———, Deputy.

In the United States District Court for the Territory of Hawaii.

In the Matter of the Petition of CHING LUM, for a Writ of Habeas Corpus.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition, Order and Writ of Habeas Corpus; filed October 18, 1913.
2. Bond; filed October 18, 1913.
3. Demurrer to Petition; filed October 22, 1913.
4. Decision Overruling Demurrer to Petition; filed October 25, 1913.
5. Return of Richard L. Halsey to Writ of Habeas Corpus; filed October 28, 1913.
6. Demurrer to the Return; filed December 1, 1913.
7. Decision on Demurrer to Return; filed August 2, 1915.
8. Supplementary Decision; filed August 9, 1915.
9. Judgment; filed December 16, 1915.

10. Petition for Appeal; filed February 15, 1916.
 11. Order Allowing Appeal; filed February 15, 1916.
 12. Assignment of Errors; filed February 15, 1916.
 13. Citation on Appeal; filed February 15, 1916.
 14. All minute entries in above-entitled cause.
- [80]
15. This Praeceptum.

Said transcript to be prepared as required by law and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of said Circuit Court of Appeals at San Francisco, before the 15th day of March, A. D. 1916.

THE UNITED STATES OF AMERICA.

By (Sgd.) HORACE W. VAUGHAN,
United States Attorney.

[Endorsed]: No. 73. (Title of Court and Cause.)
Praeceptum for Transcript. Filed February 15, 1916.
(Sgd.) F. L. Davis, Clerk. [81]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

No. 73.

In the Matter of the Petition of CHING LUM, for
a Writ of Habeas Corpus.

United States of America,
District of Hawaii,—ss.

I, George R. Clark, Clerk of the District Court of

the United States for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 82, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the matter of the Petition of Ching Lum for a writ of habeas corpus, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on appeal and three (3) orders extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$20.55, and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 23d day of May, A. D. 1916.

[Seal] GEORGE R. CLARK,
Clerk, United States District Court, Territory of
Hawaii. [82]

[Endorsed]: No. 2800. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Ching Lum, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed June 2, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

